The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte C. DAVID YOUNG and JAMES A. STEVENS

Appeal No. 2004-0924
Application No. 09/303,802

ON BRIEF

Before HAIRSTON, OWENS, and SAADAT, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from the final rejection of claims 1, 2 and 20-29, which are all of the claims pending in the application.

THE INVENTION

The appellants claim a method for managing channel access between nodes of a network. Claim 1 is illustrative:

1. A method for automatically managing the communication channel resources between two transceiver nodes having neighboring transceiver nodes in a network of transceiver nodes, wherein each node communicates during specific time slots and uses multiple frequencies on a time multiplex basis, the method comprising:

storing possible communication time slots and frequencies between nodes in the network at each transceiver node; and

assigning each node to at least one of a plurality of cliques, wherein each of the plurality of cliques consists of a plurality of nodes that are positioned to directly communicate with each other, wherein multiple transceiver nodes in a clique utilize the same time slot for transmitting.

THE REFERENCE

Young	5,719,868	Feb. 17, 1998

THE REJECTIONS

The claims stand rejected as follows: claims 20-22 and 24-29 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the appellants regard as the invention, and claims 1, 2 and 23 under 35 U.S.C. § 103 as being unpatentable over Young.

OPINION

We affirm the rejection under 35 U.S.C. § 112, second paragraph, and reverse the rejection under 35 U.S.C. § 103.

Rejection under 35 U.S.C. § 112, second paragraph

The appellants state that "[a]pplicants agree that some of the language in claim 20 is somewhat confusing" (brief, page 7). The appellants do not argue that the language in any of claims 21, 22 and 25-29, which depend directly or indirectly from claim 20, eliminates that confusion.

The appellants argue that the recitation of step (f) in claim 24 does not imply that steps (a)-(e) in claims 20-22 are included in claim 24. Claim 24 depends from claim 23 and does not directly or indirectly depend from claims 20-22. However, when claim 24 was added by amendment (filed July 9, 2002, paper no. 4), the appellants stated that claim 24 depends from claim 22 (page 7). Thus, it is unclear whether the dependence of claim 24 from claim 23, which does not include steps (a)-(e), is correct, or whether claim 24 should depend from claim 22 which includes those steps.

The appellants rely upon an amendment filed with the brief to clarify claims 20-22 and 24-29 (brief, pages 6-9), but that amendment has not been entered (answer, page 6).

We therefore affirm the rejection of claims 20-22 and 24-29 under 35 U.S.C. § 112, second paragraph.

Rejection under 35 U.S.C. § 103

The appellants' claim 1, from which claims 2 and 23 depend, requires that each node is assigned to at least one of a plurality of cliques.

The term "clique" is to be given its broadest reasonable interpretation consistent with the specification, as it would have been read by one of ordinary skill in the art in view of the

specification and prior art. *See In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983); *In re Herz*, 537 F.2d 549, 551, 190 USPQ 461, 463 (CCPA 1976); *In re Okuzawa*, 537 F.2d 545, 548, 190 USPQ 464, 466 (CCPA 1976). The specification states that in figure 4, all possible cliques of the nodes in that figure are shown by dashed lines (page 6, first paragraph). Every node in each of those cliques is in line-of-site, i.e., within one hop, of every other node in the clique. This relationship is different than the relationship between the nodes in the neighborhoods shown by dashed lines in figure 1, wherein some nodes within each neighborhood are more than one hop away from each other. Thus, the broadest reasonable interpretation of "clique", in view of the appellants' specification, is that it requires every node in the clique to be in line-of-sight of every other node in the clique.

The examiner argues that in both of Young's neighborhoods 4 and 8, nodes 4 and 8 communicate directly with all other nodes in their neighborhood (answer, pages 7-8). The appellants' term "clique", given its broadest reasonable interpretation in view of the specification as set forth above, requires that all of the nodes in the clique communicate directly with each other. In

Young's neighborhoods 4 and 8, although nodes 4 and 8 are one hop from every other node in their neighborhoods, some of the nodes in each neighborhood are more than one hop away from each other. Hence, these neighborhoods are not cliques as that term is used by the appellants.

The examiner argues that "referring to neighborhood 1, Young discloses in column 1 lines 16-26, that node 1 broadcasts to all nodes in its neighborhood that are within line-of-site or one hop from the transmitter, all of which indicates that the nodes in the neighborhoods of Young do communicate directly" (answer, page 8). As discussed above, because some of the nodes in Young's neighborhoods are more than one hop from each other, Young's neighborhoods do not fall within the appellants' term "clique".

The examiner argues that it would have been obvious to one of ordinary skill in the art to limit Young's neighborhoods to nodes that all directly communicate with each other to provide faster message communications (answer, pages 5 and 7). The appellants challenge that argument (brief, page 10), and the examiner does not support the argument with evidence included in

the statement of the rejection.[1] The examiner's mere speculation is not a sufficient basis for a *prima facie* case of obviousness. *See In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968); *In re Sporck*, 301 F.2d 686, 690, 133 USPQ 360, 364 (CCPA 1962).

Accordingly, we reverse the rejection of claims 1, 2 and 23 under 35 U.S.C. § 103.

DECISION

The rejection of claims 20-22 and 24-29 under 35 U.S.C. § 112, second paragraph, is affirmed. The rejection of claims 1, 2 and 23 under 35 U.S.C. § 103 over Young is reversed.

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[1] The examiner attempts to incorporate U.S. 5,872,930 to Masters et al. into the examiner's answer (page 5). Because that reference is applied as prior art but is not included in the statement of the rejection, it is not properly before us. *See In re Hoch*, 428 F.2d 1341, 1342 n.3, 166 USPQ 406, 407 n.3 (CCPA 1970). We therefore do not give weight to that reference in reaching our decision.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

Kenneth W. Hairston
Administrative Patent Judge

Terry J. Owens
Administrative Patent Judge

Mahshid D. Saadat
Administrative Patent Judge

BOARD OF PATENT APPEALS AND INTERFERENCES

TJO/eld

Appeal No. 2004-0924
Application No. 09/303,802

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